Supreme Court, U.S.
FILED
APR 30 2002
OFFICE OF THE CLERK

(2) (2)

Nos. 01-1104 and 01-1112

In the Supreme Court of the United States

RANDALL W. HANSEN, PETITIONER

v.

UNITED STATES OF AMERICA

CHRISTIAN A. HANSEN AND ALFRED R. TAYLOR, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

THEODORE B. OLSON
Solicitor General
Counsel of Record
THOMAS L. SANSONETTI
Assistant Attorney General
JOHN A. BRYSON
TODD S. AAGAARD
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

23pp

QUESTIONS PRESENTED

1. Whether the district court's instructions to the jury stated with sufficient clarity the scienter elements of the environmental crimes with which petitioners were charged.

2. Whether petitioners were properly convicted of environmental violations to which they had knowingly contributed, even though they did not remain in positions of supervisory authority at the time that certain of the violations occurred.

3. Whether petitioners were properly convicted of environmental violations to which they had knowingly contributed, despite the fact that the corporation for which petitioners worked had declared bankruptcy and was subject to certain constraints on discretionary spending.

4. Whether an agreement among employees of the same corporation to commit an offense against the United States can constitute a conspiracy punishable under 18 U.S.C. 371.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	8
Conclusion	19

TABLE OF AUTHORITIES

Cases:

Bryan v. *United States*, 524 U.S. 184 (1998)	9
Midlantic Nat'l Bank v. *New Jersey Dep't of Envtl. Prot.*, 474 U.S. 494 (1986)	5
Ohio v. *Kovacs*, 469 U.S. 274 (1985)	5
Pinkerton v. *United States*, 328 U.S. 640 (1946)	17
Staples v. *United States*, 511 U.S. 600 (1994)	9
United States v. *Anthony Dell Aquilla Enter. & Subsidiaries*, 150 F.3d 329 (3d Cir. 1998)	17
United States v. *Bestfoods*, 524 U.S. 51 (1998)	17
United States v. *Dean*, 969 F.2d 187 (6th Cir. 1992), cert. denied, 507 U.S. 1033 (1993)	9
United States v. *Giovannetti*, 919 F.2d 1223 (7th Cir. 1990)	13
United States v. *Goldsmith*, 978 F.2d 643 (11th Cir. 1992)	9
United States v. *Hamblin*, 911 F.2d 551 (11th Cir. 1990), cert. denied, 500 U.S. 943 (1991)	10
United States v. *Jewell*, 532 F.2d 697 (9th Cir.), cert. denied, 426 U.S. 951 (1976)	13
United States v. *MacDonald & Watson Waste Oil Co.*, 933 F.2d 35 (1st Cir. 1991)	10
United States v. *Protex Indus., Inc.*, 874 F.2d 740 (10th Cir. 1989)	9
United States v. *Township of Brighton*, 153 F.3d 307 (6th Cir. 1998)	17

Case—Continued: Page

United States v. *Williams*, 504 U.S. 36 (1992) 13, 18

Statutes:

Clean Water Act, 33 U.S.C. 1251 *et seq.* 2
33 U.S.C. 1311(a) 2
33 U.S.C. 1319(c)(1) 2
33 U.S.C. 1319(c)(2)(A) 2, 14
33 U.S.C. 1342 2
Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*:
42 U.S.C. 9603(b0(3) 4
42 U.S.C. 9607(a)(2) 17
Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* 2
42 U.S.C. 6925 (1994 & Supp. V 1999) 2
42 U.S.C. 6928(d) 9
42 U.S.C. 6928(d)(2) 2
42 U.S.C. 6928(d)(2)(A) 4, 13
42 U.S.C. 6928(e) 2, 4, 13, 14, 15
42 U.S.C. 6928(f)(1)-(2) 14
42 U.S.C. 6928(f)(1)(C) 9
18 U.S.C. 371 ..... 3, 4, 18, 19

Miscellaneous:

Shaun P. Martin, *Intracorporate Conspiracies*, 50 Stan. L. Rev. 399 (1998) 19

In the Supreme Court of the United States

No. 01-1104

RANDALL W. HANSEN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 01-1112

CHRISTIAN A. HANSEN AND ALFRED R. TAYLOR, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (01-1112 Pet. App. 1a-76a) is reported at 262 F.3d 1217. The opinion of the district court (01-1112 Pet. App. 77a-117a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 24, 2001. A petition for rehearing was denied

on October 26, 2001 (01-1112 Pet. App. 118a-119a). The petitions for a writ of certiorari were filed on January 24, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, prohibits the discharge of any pollutant into waters of the United States, except in compliance with a permit issued pursuant to the Act. 33 U.S.C. 1311(a), 1342. The CWA establishes criminal penalties of up to three years' imprisonment for any person who "knowingly violates" that prohibition. 33 U.S.C. 1319(c)(2)(A).[1]

b. The Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, regulates the generation, treatment, storage, transportation, and disposal of hazardous wastes. RCRA requires a person to obtain a permit in order to treat, store, or dispose of hazardous waste. 42 U.S.C. 6925 (1994 & Supp. V 1999). Any person who "knowingly treats, stores, or disposes of any hazardous waste" either without a permit or "in knowing violation of any material condition or requirement of such permit" is subject to up to five years' imprisonment. 42 U.S.C. 6928(d)(2). RCRA also contains a knowing endangerment provision, which authorizes imprisonment for up to 15 years for any person who (1) "knowingly * * * treats, stores, [or] disposes of * * * any hazardous waste" either without a permit or in violation of a permit; and (2) "knows at that time that he thereby places another person in imminent danger of death or serious bodily injury." 42 U.S.C. 6928(e).

---

[1] The CWA also establishes misdemeanor penalties for negligent violations. 33 U.S.C. 1319(c)(1).

c. Section 371 of Title 18 makes it a crime to "conspire * * * to commit any offense against the United States." 18 U.S.C. 371.

2. After a jury trial in the Southern District of Georgia, petitioners Randall W. Hansen, Christian A. Hansen, and Alfred R. Taylor were found guilty of numerous federal criminal environmental violations for their involvement in the operation of a chlor-alkali chemical plant in Brunswick, Georgia. See 01-1112 Pet. App. 15a-16a. The plant was owned and operated by LCP Chemicals (LCP), a division of Hanlin Group, Inc. (Hanlin). *Id.* at 78a. In July 1991, Hanlin filed for Chapter 11 bankruptcy, but it continued to operate the plant as the debtor-in-possession. *Id.* at 7a. Christian Hansen and his son, Randall Hansen, were Hanlin executives who oversaw management of the plant. *Id.* at 2a, 80a. From February 1993 until July 1993, Taylor was the plant manager, and he later worked in the plant as a project engineer. *Ibid.*

The district court described the conditions at the plant as "hellish" and "execrable." 01-1112 Pet. App. 83a, 103a. The plant's wastewater treatment system was grossly inadequate and often wholly inoperative. *Id.* at 79a. Contaminated wastewater containing mercury, chlorine, and caustic soda backed up in the plant, flooding areas where employees worked and forcing them to wade through the wastes or to walk on wooden catwalks built over the wastes. *Id.* at 78a-79a & n.2. As the toxic wastewater accumulated, it was stored on the floors of the plant, in railway tank cars, and in old oil storage tanks. *Id.* at 79a-80a. Wastes frequently overflowed from the plant onto adjacent land, creating a large pool of hazardous waste that came to be known as "Lake Mercury." *Ibid.* Petitioners knew about the conditions that had resulted from the decrepit condition

of the plant but did not correct the situation, see *id.* at 97a, because they wished to keep the plant in operation until a buyer could be found, *id.* at 51a.

Petitioners were found guilty of conspiring to violate environmental laws, in violation of 18 U.S.C. 371; knowingly causing the pollutant discharge limits in the plant's CWA permit to be exceeded, in violation of 33 U.S.C. 1319(c)(2)(A); knowingly causing unpermitted storage and disposal of hazardous wastes, in violation of RCRA, 42 U.S.C. 6928(d)(2)(A); and knowingly endangering others through their RCRA violations, 42 U.S.C. 6928(e). See 01-1112 Pet. App. 15a-16a, 77a. In addition, petitioners Christian Hansen and Taylor were found guilty of failing to report releases of hazardous substances, in violation of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9603(b)(3). 01-1112 Pet. App. 16a. In total, petitioner Christian Hansen was found guilty on 41 counts, petitioner Randall Hansen was found guilty on 34 counts, and petitioner Taylor was found guilty on 20 counts. *Ibid.* The district court denied petitioners' post-verdict motions for judgments of acquittal. *Id.* at 77a-117a. Petitioners were sentenced to terms of imprisonment of 108 months, 46 months, and 78 months, respectively. *Id.* at 16a-17a.

3. The court of appeals affirmed. 01-1112 Pet. App. 1a-76a.

a. The court of appeals examined the evidence presented at trial and concluded that each petitioner bore sufficient responsibility for the charged violations to support his convictions under the charged environmental statutes. 01-1112 Pet. App. 26a-33a. Petitioner Christian Hansen contended that he was entitled to a judgment of acquittal with respect to all violations that had occurred either between April and July 1993 (after

he was deposed as Hanlin CEO and before he became plant manager) or after October 1993 (when he was replaced as plant manager). *Id.* at 27a-28a. The court of appeals rejected that contention, explaining that

> [t]he testimony at trial indicated that Hansen was aware that wastewater was permitted to flow out the control room back door in June 1993, and directed the use of the old Bunker C storage tanks for storage of wastewater, including the inadequately treated wastewater from the treatment system, from July through September 1993. Although the acts continued after Hansen left his decision-making position, the acts occurred at his direction. This evidence was sufficient for the jury to reasonably conclude beyond a reasonable doubt that his acts were in furtherance of the violations.

Id. at 28a (footnotes omitted).

The court of appeals rejected petitioner Randall Hansen's contention that his convictions should be set aside because "under the laws of bankruptcy and corporate governance, he lacked the authority to close the plant or to allocate the funds for the needed capital improvements." 01-1112 Pet. App. 29a. The court observed that "[b]ankruptcy does not insulate a debtor from environmental regulatory statutes." *Id.* at 30a (citing *Ohio* v. *Kovacs*, 469 U.S. 274, 284-285 (1985), and *Midlantic Nat'l Bank* v. *New Jersey Dep't of Envtl. Prot.*, 474 U.S. 494, 507 (1986)). The court further explained that in his capacity as Executive Vice-President and acting CEO, petitioner Randall Hansen

> received daily reports about the plant's operations and environmental problems, wrote and received memos regarding specific plant operational problems, received monthly written environmental

> reports and oral environmental reports. He admitted that Hanlin's bankruptcy was not an excuse for violating environmental laws. There is no indication that he asked the Hanlin Board or the bankruptcy court to close the plant. The evidence indicates that he apparently misled them into believing that environmental compliance was not a problem.

Id. at 31a (citations omitted).

The court of appeals also rejected the claim of petitioner Taylor "that he should not be held responsible for the environmental violations that occurred after he resigned as plant manager * * * on 16 July 1993." 01-1112 Pet. App. 32a. The court explained that petitioner "returned shortly thereafter as a project engineer and continued in that position until the plant closed," and that in that capacity "Taylor was directly involved in responding to the plant's environmental and safety problems." *Ibid.* The court concluded that

> [a]lthough Taylor left his managerial position, he continued to work in a position in which he directed or authorized acts of the employees on environmental and safety problems. Testimony at trial indicated that, in October 1993, Taylor was aware of the wastewater overflow from the cellrooms, the excess loss of mercury, and the use of the tank cars for wastewater storage, and that he supervised the release of the overflow. This evidence was sufficient for the jury to conclude beyond a reasonable doubt that these acts were in furtherance of the violations.

Id. at 32a-33a (footnotes omitted).

b. The court of appeals rejected petitioners' contention that the evidence was insufficient to support their convictions for knowing endangerment under RCRA. 01-1112 Pet. App. 40a-48a. The court recognized that

"[f]or a conviction of knowing endangerment under the RCRA, the government must prove that the defendants knowingly caused the illegal treatment, storage, or disposal of hazardous wastes while knowing that such conduct placed others in imminent danger of death or serious injury." *Id.* at 40a. The court concluded that "[t]he evidence showed that [petitioners] knew that the conditions of the plant were dangerous and that the conditions posed a serious danger to the employees." *Id.* at 44a; see *id.* at 44a-46a (reviewing trial evidence).

c. The court of appeals held that petitioners were not entitled to judgments of acquittal on the charge of conspiring to violate environmental laws. 01-1112 Pet. App. 48a-51a. Based on the evidence presented at trial, the court concluded that petitioners "shar[ed] the common goal to operate the plant until a buyer could be found. The jury could infer from this goal and [petitioners'] knowledge of the plant's continuing problems with worker safety and environmental compliance that they reached a tacit agreement to operate the plant in violation of environmental laws." *Id.* at 51a. The court noted as well that petitioners "frequently communicated with each other regarding operation of the plant despite the continuous environmental concerns." *Ibid.*

d. The court of appeals rejected petitioner Randall Hansen's contention that the government had failed to prove the scienter element of the CWA and RCRA charges. 01-1112 Pet. App. 51a-53a. The court explained that

> although [petitioner] did not directly cause the violations, he knew that the plant was violating its permit on an almost daily basis, accumulating wastes that it could not treat, and was frequently releasing the wastes from the cellrooms as needed

> to keep the plant operational. * * * [Petitioner] knew that the plant was incapable of complying with the environmental standards and knew that the violations were inevitable.

Id. at 52a. The court "conclude[d] that the evidence that [petitioner] permitted the plant employees to process the hazardous wastes as they had in the past despite his knowledge that the procedures were in violation of environmental regulations was sufficient to show that [petitioner] acted 'knowingly.'" *Id.* at 52a-53a.

e. The court of appeals rejected various challenges made by petitioners to the jury instructions given at trial. 01-1112 Pet. App. 53a-68a. Petitioners contended, *inter alia*, that the instruction given by the district court on supervisor liability allowed the jury to return a guilty verdict if it found constructive rather than actual knowledge of the violations. *Id.* at 63a. The court of appeals quoted the district court's instruction that "a person acts knowingly if he acts intentionally and voluntarily, realizing what he is doing, and not because of ignorance, mistake, accident, or carelessness." *Id.* at 62a. The court noted as well that the instruction on supervisor liability required the jury to find "that the Defendant acted knowingly in failing to prevent, detect or correct the violation." *Id.* at 63a. The court concluded that "[b]ecause the instructions clearly set forth that a finding of 'acted knowingly' was required for a conviction, there was no error in the instruction." *Id.* at 64a.

ARGUMENT

1. Petitioners contend (01-1104 Pet. 17-26; 01-1112 Pet. 18-26) that the district court's instructions allowed the jury to find them guilty of environmental violations

of which they did not have knowledge. They assert that, by affirming their convictions, the court of appeals "improperly eliminated the 'actual knowledge' standard by deeming the regulations at issue to be public welfare statutes and allowing the jury to convict without the Government proving that the Petitioners had the *mens rea* necessary to commit the violation." 01-1112 Pet. 13. That argument reflects a misunderstanding both of the court of appeals' decision and of the jury instructions given at trial.

a. Federal laws that criminalize "knowing" violations of statutory requirements are generally read to require proof that the defendant had knowledge of the facts that constitute the offense. See *Bryan* v. *United States*, 524 U.S. 184, 193 (1998); cf. *Staples* v. *United States*, 511 U.S. 600, 608 n.3 (1994) (defendant generally must "know the facts that make his conduct fit the definition of the offense"). Consistent with that principle, courts have required proof that defendants accused of violating RCRA, 42 U.S.C. 6928(d), knew that they were causing the treatment, transportation, storage, or disposal of a hazardous waste. See *United States* v. *Goldsmith*, 978 F.2d 643, 645-646 (11th Cir. 1992); *United States* v. *Dean*, 969 F.2d 187, 191 (6th Cir. 1992), cert. denied, 507 U.S. 1033 (1993). With respect to RCRA's knowing endangerment provision, the statute states the knowledge requirement explicitly: the defendant must be aware that his violation of other provisions of RCRA "is substantially certain to cause danger of death or serious bodily injury." 42 U.S.C. 6928(f)(1)(C); see *United States* v. *Protex Indus., Inc.*, 874 F.2d 740, 744 (10th Cir. 1989). Those knowledge requirements apply regardless of whether the defendant is a line employee who personally performs the forbidden act, or a higher-level corporate officer who

causes the violation to occur through the exercise of supervisory authority. See *United States* v. *MacDonald & Watson Waste Oil Co.*, 933 F.2d 35, 55 (1st Cir. 1991).

The court of appeals in affirming petitioners' convictions did not hold or suggest that their positions as corporate officers permitted them to be convicted without proof that they possessed the requisite knowledge. Despite petitioners' contentions, the court did not treat felony violations of the CWA and/or RCRA as "public welfare" offenses (01-1112 Pet. 19-20; see 01-1104 Pet. 23, 26) or "convert[] the CWA into a strict liability statute" (01-1112 Pet. 24). To the contrary, the court of appeals recognized that the validity of petitioners' convictions required proof that each petitioner "associated himself with the criminal venture" and "shared the same unlawful intent as the actual perpetrator." 01-1112 Pet. App. 26a (quoting *United States* v. *Hamblin*, 911 F.2d 551, 557 (11th Cir. 1990), cert. denied, 500 U.S. 943 (1991)). In affirming petitioner Randall Hansen's CWA and RCRA convictions, the court acknowledged that those statutes "contain explicit knowledge requirements" (*id.* at 52a), and it "conclude[d] that the evidence that [petitioner] permitted the plant employees to process the hazardous wastes as they had in the past despite his knowledge that the procedures were in violation of environmental regulations was sufficient to show that [petitioner] acted 'knowingly'" (*id.* at 52a-53a). There is consequently no basis for petitioners' contention (01-1104 Pet. 24-26; 01-1112 Pet. 20) that the court of appeals' decision conflicts with decisions in other circuits declining to treat environmental felonies as public welfare offenses.

b. As the court of appeals explained (01-1112 Pet. App. 60a-64a), the district court instructed the jury on

the applicable knowledge requirements. See 01-1104 Pet. App. 85a, 89a-90a. The crux of petitioners' challenge to the district court's instructions is that the instruction on supervisor liability may have confused the jury into disregarding the instructions on the knowledge required for each RCRA count.[2] That case-specific claim does not warrant this Court's review.

In any event, the argument lacks merit. At the end of the jury charge on the RCRA counts, the district court explained the circumstances under which a supervisor could be held criminally liable for RCRA violations committed by his subordinates. In full, the pertinent jury instruction read as follows:

> Each Defendant may be found guilty of Count 22 through 34 of the Indictment if you find that the Government has proven the following beyond a reasonable doubt:
>
> *First*: that the Defendant under consideration had a responsible relationship to the violation—that is, that it occurred under his area of authority and supervisory responsibility;
>
> *Second*: that the Defendant had the power or the capacity to prevent the violation; and
>
> *Third*: that the Defendant *acted knowingly* in failing to prevent, detect or correct the violation.

---

[2] Petitioner Randall Hansen also argues (01-1104 Pet. 19 n.17) that the supervisor liability instruction could have misled the jury about the mental state requirements under the CWA and CERCLA. The instruction expressly stated, however, that it applied only to counts 22 through 34—the RCRA counts. 01-1104 Pet. App. 95a.

01-1104 Pet. App. 95a (emphasis added). The third paragraph of the instruction thus made clear that the jury could find petitioners guilty only if it determined that they had "acted knowingly." The district court had previously instructed that "[a] person acts knowingly if he acts intentionally and voluntarily, realizing what he is doing, and not because of ignorance, mistake, accident, or carelessness." *Id.* at 85a. Those instructions did not allow the jury to find any of the petitioners guilty without determining that he knew of the RCRA violations, because it is impossible for a supervisor to "act knowingly" in failing to prevent or correct a violation without being aware of that violation.

Petitioner Randall Hansen suggests (01-1104 Pet. 18) that, by instructing the jury that it could convict a petitioner for knowingly failing to detect or to correct a RCRA violation within the scope of his supervisory responsibility, the supervisor liability instruction allowed the jury to return a guilty verdict even if petitioner had no knowledge of the violation (for knowingly failing to detect) or learned about the violation only after it stopped (for knowingly failing to correct).[3] Those arguments are raised for the first time in his petition for a writ of certiorari. This Court generally does not address claims that were neither properly raised nor de-

---

[3] Although petitioner Randall Hansen points out (01-1104 Pet. 18 n.15) that at sentencing the district court remarked that petitioner learned about some violations only "after the fact," the court of appeals concluded that petitioner "knew that the plant was incapable of complying with the environmental standards and knew that the violations were inevitable." 01-1112 Pet. App. 52a. The court of appeals also held that "[e]ach of the substantive offenses were foreseeable consequences of the [petitioners'] agreement to continue operating the plant in violation of the environmental statutes." *Id.* at 51a.

cided below. See *United States* v. *Williams*, 504 U.S. 36, 41 (1992). At any rate, the arguments lack merit. To knowingly fail to detect a violation is to deliberately avoid knowledge of it, which the law has long equated with actual knowledge.[4] See, *e.g.*, *United States* v. *Giovannetti*, 919 F.2d 1223, 1228 (7th Cir. 1990) ("deliberate effort to avoid guilty knowledge is all the law requires"); *United States* v. *Jewell*, 532 F.2d 697, 700 (9th Cir.) ("deliberate ignorance and positive knowledge are equally culpable"), cert. denied, 426 U.S. 951 (1976). With respect to knowingly failing to correct a violation, a violation can only be corrected while it is still ongoing. A defendant who *knowingly* failed to correct a violation, therefore, must have known about the violation while it was still ongoing.

c. Petitioners contend (01-1104 Pet. 20-23; 01-1112 Pet. 23-24) that, if not erroneous on the RCRA illegal storage and disposal counts, the supervisor liability instruction was at least erroneous on the RCRA knowing endangerment count. RCRA's knowing endangerment provision incorporates each of the elements of a hazardous waste treatment, storage, or disposal violation under 42 U.S.C. 6928(d)(2)(A), plus two additional elements: (1) that the hazardous waste violation placed other persons in "imminent danger of death or serious bodily injury"; and (2) that the defendant had knowledge of that danger. 42 U.S.C. 6928(e). In instructing the jury on the mental state element of the knowing endangerment offense, the district court explained:

---

[4] With respect to the knowing endangerment count, the district court instructed the jury that "[t]he Defendant may not * * * affirmatively shield himself from knowledge. You may treat such deliberate avoidance of positive knowledge as the equivalent of knowledge." 01-1104 Pet. App. 90a.

> [I]n addition to finding that such Defendant placed another person in imminent danger of death or serious bodily injury, you must also find that the Defendant was actually aware or actually believed that his conduct was substantially certain to cause danger of death or serious bodily injury. *A Defendant is only responsible for his own actual awareness or actual belief.* Another person's knowledge of the danger or knowledge that the Defendant should have had or could have had under other circumstances does not suffice and *cannot be attributed to the Defendant under consideration.*

01-1104 Pet. App. 90a (emphasis added). That instruction closely tracked the language of the statute. See 42 U.S.C. 6928(f)(1)-(2).

The supervisor liability instruction in no way undermined those specific knowledge requirements. That instruction required the jury to determine whether each petitioner "had a responsible relationship to *the violation*—that is, that [the violation] occurred under his area of authority and supervisory responsibility." 01-1104 Pet. App. 95a (emphasis added). The nature of "the violation" differs for each of the specific RCRA offenses. Because a knowing endangerment violation under 42 U.S.C. 6928(e) includes both unlawful conduct (treatment, storage, or disposal of hazardous waste) *and* a resulting dangerous condition, the supervisor liability instruction allowed the jury to find a petitioner guilty only if it determined that both the conduct and the dangerous condition occurred within the petitioner's scope of "authority and supervisory responsibility." And because the supervisor liability instruction made clear that petitioners could be found guilty only if they "acted knowingly" (01-1104 Pet. App. 95a), it could

not plausibly be thought to have obscured the import of the prior instruction (*id.* at 90a) that specifically addressed the scienter element of the knowing endangerment offense.

In any event, the court of appeals recognized that to establish the elements of a knowing endangerment violation, "the government must prove that [petitioners] knowingly caused the illegal treatment, storage, or disposal of hazardous wastes while knowing that such conduct placed others in imminent danger of death or serious injury." 01-1112 Pet. App. 40a; see *id.* at 44a ("The evidence showed that [petitioners] knew that the conditions of the plant were dangerous and that the conditions posed a serious danger to the employees."). In sustaining the instructions given on that count, the court explained that

> RCRA's knowing endangerment provision also requires proof that the hazardous waste violation placed persons in "imminent danger of death or serious bodily injury" and that the defendant had knowledge of that danger. 42 U.S.C. § 6928(e). Because the instructions clearly set forth that a finding of "acted knowingly" was required for a conviction, there was no error in the instruction.

Id. at 64a. It is therefore clear that the court of appeals correctly understood the scienter element of the knowing endangerment offense. The fact-specific question whether the combination of instructions given in this case expressed the governing standard with sufficient clarity does not warrant this Court's review.

2. Petitioners Christian Hansen and Taylor argue (01-1112 Pet. 14-18) that the court of appeals erred in upholding their convictions for violations that occurred

when they were no longer manager of the plant.[5] Petitioners contend that, by affirming their convictions for those violations, the court of appeals "essentially assumes liability without the necessary showing of a nexus between the act or omission forming the basis of the liability and a person's responsibility for that act or omission." *Id.* at 18.

In fact, the court of appeals expressly found that petitioners contributed to the violations of which they were convicted, even those that occurred when they were not plant manager. With respect to petitioner Christian Hansen, the court found that petitioner's actions when he was plant manager were a contributing cause of violations that continued after he had left that position: "Although the acts continued after [Christian] Hansen left his decision-making position, the acts occurred at his direction." 01-1112 Pet. App. 28a. As for petitioner Taylor, the court noted that petitioner returned to the plant soon after he resigned as plant manager and worked as a project engineer until the plant closed, "a position in which he directed or authorized acts of the employees on environmental and safety problems." *Id.* at 32a. Thus, the court of appeals did not simply assume a nexus between petitioners' actions and the violations, but rather held that the evidence was sufficient for the jury to find that petitioners had aided and abetted each of the violations of which they were convicted. Moreover, even if petitioners had not personally contributed to each of those violations, they

---

[5] Taylor resigned as plant manager on July 16, 1993, returning shortly thereafter as a project engineer, the position that he held until the plant closed. 01-1112 Pet. App. 32a. After being deposed as Hanlin's CEO, Christian Hansen worked as acting plant manager from July 16, 1993, to October 1993. *Id.* at 27a-28a.

still would be criminally responsible for all the violations under the doctrine of co-conspirator liability. See *Pinkerton* v. *United States*, 328 U.S. 640, 646-647 (1946).[6]

Petitioners' reliance (01-1112 Pet. 16-18) on *United States* v. *Anthony Dell'Aquilla Enter. & Subsidiaries*, 150 F.3d 329 (3rd Cir. 1998), and *United States* v. *Township of Brighton*, 153 F.3d 307 (6th Cir. 1998), is misplaced. Those cases involved the application of Clean Air Act and CERCLA provisions imposing *strict liability* on "operators" of facilities at which violations occurred. See *Dell'Aquilla*, 150 F.3d at 332-334; *Township of Brighton*, 153 F.3d at 312-314.[7] For purposes of those provisions, the courts of appeals required proof that the defendant exercised managerial responsibilities (*Township of Brighton*, 153 F.3d at 314) at the time of the violations (*Dell'Aquilla*, 150 F.3d at 334). In this case, by contrast, petitioners' criminal liability rested not on their status as "operators" of the relevant *facility*, but on their personal knowledge of and responsibility for the environmental *violations*. And while the court of appeals sustained petitioners' convictions for violations that occurred after they left their managerial positions, the court did not suggest that petitioners

---

[6] In upholding petitioners' conspiracy convictions, the court of appeals explained that petitioners "shar[ed] the common goal to operate the plant until a buyer could be found. The jury could infer from this goal and [petitioners'] knowledge of the plant's continuing problems with worker safety and environmental compliance that they reached a tacit agreement to operate the plant in violation of environmental laws." 01-1112 Pet. App. 51a.

[7] This Court's decision in *United States* v. *Bestfoods*, 524 U.S. 51 (1998) (see 01-1112 Pet. 14-15), likewise involved the interpretation of CERCLA's strict liability provision, 42 U.S.C. 9607(a)(2). See 524 U.S. at 55-56.

could be held strictly liable based on their status as former corporate managers.

3. Petitioners Christian Hansen and Taylor contend (01-1112 Pet. 26-30) that this Court should grant certiorari to "resolve the friction between the bankruptcy and environmental regulations." According to petitioners (*id.* at 28), this case presents the question "whether a corporate officer or employee can be held criminally liable for environmental violations even when he had no authority to act to prevent, control or mitigate those violations because the corporation was in bankruptcy." Because petitioners concede (*ibid.*) that the issue they seek to raise "has not been addressed below or by other courts," the question is not ripe for this Court's review. In any event, the issue is not presented in this case. The court of appeals found not merely that petitioners had failed to prevent the plant's environmental violations, but that they had knowingly acted in furtherance of the violations by directing and supervising the unlawful acts, by misleading the Hanlin board and the bankruptcy court into believing that environmental compliance was not a problem at the plant, and by misrepresenting to state environmental authorities the causes of the plant's violations. See 01-1112 Pet. App. 26a-33a.

4. Petitioner Randall Hansen argues (01-1104 Pet. 26-30) that this Court should grant certiorari to determine whether employees of a single corporation can conspire to commit a criminal offense in violation of 18 U.S.C. 371. He raises that claim for the first time in his petition for a writ of certiorari. This Court generally does not address claims that were neither properly raised nor decided below. See *Williams*, 504 U.S. at 41.

There is, moreover, no disagreement on this issue among the federal courts of appeals. Petitioner relies

on a law review article, which itself admits that "every federal appellate court that has squarely addressed the issue has affirmed the validity of intracorporate conspiracy prosecutions in which multiple corporate agents were involved." Shaun P. Martin, *Intracorporate Conspiracies*, 50 Stan. L. Rev. 399, 412 (1998). The article concedes, moreover, that the text of 18 U.S.C. 371 "does not exclude the conviction of * * * individuals for conspiracy based upon wholly intracorporate conduct." *Id.* at 440. The thrust of the article is that corporate entities should not be subject to vicarious criminal liability for conspiracies among their individual employees, not that the individuals themselves should escape prosecution under the conspiracy statute. See 50 Stan. L. Rev. at 440 n.250.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General
THOMAS L. SANSONETTI
Assistant Attorney General
JOHN A. BRYSON
TODD S. AAGAARD
Attorneys

APRIL 2002